

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RALPH JAMES MITCHELL,) CIVIL NO. 13-00310 DKW-RLP
)
Plaintiff,) FINDINGS AND RECOMMENDATION TO
) DENY PLAINTIFF'S APPLICATION TO
vs.) PROCEED WITHOUT PREPAYMENT OF
) FEES
LUCY ELIZABETH MITCHELL, ET)
AL.,)
)
Defendants.)
)

FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S
APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES¹

Before the Court is Plaintiff's Application to Proceed Without Prepayment of Fees, filed on June 21, 2013. ECF No. 2. The Court finds this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii. After careful consideration, the Court FINDS AND RECOMMENDS that the district court DENY Plaintiff's Application.

DISCUSSION

On June 21, 2013, Plaintiff Ralph James Mitchell filed a Complaint regarding the sale of certain real property. See ECF No. 1. Plaintiff filed his Application to Proceed Without

¹ Within fourteen days after a party is served with a copy of the Findings and Recommendation, that party may, pursuant to 28 U.S.C. § 636(b)(1)(B), file written objections in the United States District Court. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the Findings and Recommendation. If no objections are filed, no appellate review will be allowed.

Prepayment of Fees on the same day. Federal courts may authorize the commencement of any suit without the prepayment of fees by a person who submits an affidavit that the person is unable to pay such fees pursuant to 28 U.S.C. § 1915(a)(1). "[A]n affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life." Adkins v. E.I. Du Pont de Nemours & Co., Inc., 335 U.S. 331, 339 (1948) (quotations omitted); see also United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) (quotations omitted) (the affidavit must "state the facts as to affiant's poverty with some particularity, definiteness and certainty"). In determining whether to grant an application to proceed without prepayment of fees, the Court is guided by whether the applicant's yearly income surpasses the poverty guideline.

Plaintiff's Application states that he is retired from the Chicago Police Department and receives \$2,650 per month in retirement benefits. ECF No. 2 at 1. This results in an annual income of \$31,800. Plaintiff states that he has no dependants. Id. at 2. Plaintiff's identified monthly expenses are approximately \$1,012. Id. at 2. The Department of Health and Human Services 2013 Poverty Guidelines indicate that the poverty guideline for a single person in Hawaii is \$13,230. Annual Update of the Health and Human Services Poverty Guidelines, 78

Fed. Reg. 5182-83 (Jan. 24, 2013). Based on the information provided in the Application, Plaintiff's income exceeds the \$13,230 poverty threshold for a single person in Hawaii. See id. The Court therefore FINDS that Plaintiff does not qualify as a person who is unable to pay or give security for court fees and RECOMMENDS that the district court DENY Plaintiff's Application.

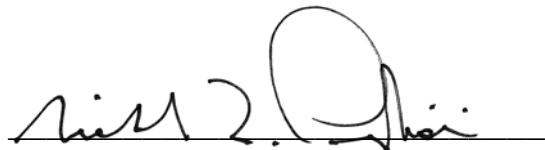
CONCLUSION

In accordance with the foregoing, the Court FINDS AND RECOMMENDS that Plaintiff's Application to Proceed Without Prepayment of Fees, filed June 21, 2013, be DENIED. If Plaintiff wishes to proceed with this action, he must remit the appropriate filing fee within thirty (30) days from the date that this Findings and Recommendation is acted upon by the district court. Failure to do so will result in the automatic dismissal of this action.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, JUNE 25, 2013.




Richard L. Puglisi
United States Magistrate Judge

MITCHELL V. MITCHELL, ET AL.; CIVIL NO. 13-00310 DKW-RLP;
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